

Calendar No. 803108TH CONGRESS
2^D SESSION**S. 1696****[Report No. 108-412]**

To amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 1, 2003

Mr. CAMPBELL (for himself and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

NOVEMBER 16, 2004

Reported by Mr. CAMPBELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Department of Health
3 and Human Services Tribal Self-Governance Amendments
4 Act of 2003”.

5 **SEC. 2. AMENDMENT.**

6 The Indian Self-Determination and Education Assist-
7 ance Act is amended by striking title VI (25 U.S.C. 450f
8 note; Public Law 93–638) and inserting the following:

9 **“TITLE VI—TRIBAL SELF-GOV-
10 ERNANCE DEMONSTRATION
11 PROJECT FOR THE DEPART-
12 MENT OF HEALTH AND
13 HUMAN SERVICES**

14 **“SEC. 601. DEFINITIONS.**

15 “In this title:

16 “(1) **COMPACT.**—The term ‘compact’ means a
17 compact under section 604.

18 “(2) **CONSTRUCTION PROJECT.**—The term ‘con-
19 struction project’ has the meaning given the term in
20 section 501.

21 “(3) **DEMONSTRATION PROJECT.**—The term
22 ‘demonstration project’ means the demonstration
23 project under this title.

24 “(4) **FUNDING AGREEMENT.**—The term ‘fund-
25 ing agreement’ means a funding agreement under
26 section 604.

1 “(5) INCLUDED PROGRAM.—The term ‘included
2 program’ means a program that is eligible for inclu-
3 sion under a funding agreement under section
4 604(c) (including any portion of such a program and
5 any function, service, or activity performed under
6 such a program).

7 “(6) INDIAN TRIBE.—The term ‘Indian tribe’,
8 in a case in which an Indian tribe authorizes an-
9 other Indian tribe, an inter-tribal consortium, or a
10 tribal organization to plan for or carry out an in-
11 cluded program on its behalf in accordance with sec-
12 tion 603(a)(3), includes the other authorized Indian
13 tribe, inter-tribal consortium, or tribal organization.

14 “(7) INTER-TRIBAL CONSORTIUM.—The term
15 ‘inter-tribal consortium’ has the meaning given the
16 term in section 501.

17 “(8) SECRETARY.—The term ‘Secretary’ means
18 the Secretary of Health and Human Services.

19 “(9) SELF-GOVERNANCE.—The term ‘self-gov-
20 ernance’ has the meaning given the term in section
21 501.

22 “(10) TRIBAL SHARE.—The term ‘tribal share’
23 has the meaning given the term in section 501.

1 **“SEC. 602. ESTABLISHMENT OF DEMONSTRATION**
 2 **-PROJECT.**

3 “(a) **DEMONSTRATION.**—For a period of not more
 4 than 5 years after the date of enactment of the Depart-
 5 ment of Health and Human Services Tribal Self-Govern-
 6 ance Amendments Act of 2003, the Secretary shall carry
 7 out a project to demonstrate the effectiveness of tribal op-
 8 eration of the included programs under self-governance
 9 principles and authorities.

10 “(b) **ADMINISTRATION.**—The management and ad-
 11 ministration of the demonstration project shall be in the
 12 Office of the Secretary.

13 **“SEC. 603. SELECTION OF PARTICIPATING INDIAN TRIBES.**

14 “(a) **IN GENERAL.**—

15 “(1) **CONTINUING PARTICIPATION.**—Not more
 16 than 50 Indian tribes that meet the eligibility cri-
 17 teria specified in subsection (b) shall be entitled to
 18 participate in the demonstration project.

19 “(2) **ADDITIONAL PARTICIPANTS.**—If more
 20 than 50 eligible Indian tribes request participation,
 21 the Secretary may select additional Indian tribes to
 22 participate in the demonstration project.

23 “(3) **OTHER AUTHORIZED INDIAN TRIBE,**
 24 **INTER-TRIBAL CONSORTIUM, OR TRIBAL GOVERN-**
 25 **MENT.**—If an Indian tribe authorizes another Indian
 26 tribe, an inter-tribal consortium, or a tribal organi-

1 zation to plan for or carry out an included program
2 on its behalf under this title, the authorized Indian
3 tribe, inter-tribal consortium, or tribal organization
4 shall have the rights and responsibilities of the au-
5 thorizing Indian tribe (except as otherwise provided
6 in the authorizing resolution).

7 “(b) ELIGIBILITY.—An Indian tribe shall be eligible
8 to participate in the demonstration project if the Indian
9 tribe, as of the date of enactment of the Department of
10 Health and Human Services Tribal Self-Governance
11 Amendments Act of 2003, is a party to a compact or fund-
12 ing agreement under this Act.

13 “(c) SELECTION.—The Secretary shall select Indian
14 tribes that request participation in the demonstration
15 project by resolution or other official action by the gov-
16 erning body of each Indian tribe to be served.

17 “(d) PLANNING AND NEGOTIATION GRANTS.—

18 “(1) IN GENERAL.—Subject to the availability
19 of appropriations, the Secretary shall establish a
20 program to allow Indian tribes that meet the eligi-
21 bility requirements of this title to be awarded a
22 planning grant or negotiation grant, or both.

23 “(2) RECEIPT OF GRANT NOT REQUIRED.—Re-
24 ceipt of a grant under paragraph (1) by an Indian

1 tribe is not a requirement for the Indian tribe to
2 participate in the demonstration project.

3 **“SEC. 604. COMPACTS AND FUNDING AGREEMENTS.**

4 “(a) IN GENERAL.—

5 “(1) NEW COMPACT AND FUNDING AGREE-
6 MENT.—Not later than 60 days after the date of
7 submission by an Indian tribe of a request to par-
8 ticipate in the demonstration project, the Secretary
9 shall negotiate and enter into a written compact and
10 funding agreement with the Indian tribe in a manner
11 that is consistent with the trust responsibility of the
12 Federal Government, treaty and statutory obliga-
13 tions, and the government-to-government relationship
14 between Indian tribes and the United States.

15 “(2) EXISTING COMPACT.—Rather than enter
16 into a new compact under paragraph (1), an Indian
17 tribe may use an existing compact negotiated under
18 title V for purposes of the demonstration project.

19 “(b) COMPACTS.—

20 “(1) CONTENTS.—A compact under subsection
21 (a) shall designate—

22 “(A) congressional policies regarding tribal
23 self-governance;

24 “(B) the intent of the demonstration
25 project;

1 “(C) such terms as shall control from year
2 to year; and

3 “(D) any provisions of this title that are
4 requested by the Indian tribe.

5 “(2) EFFECTIVE DATE.—The effective date of a
6 compact shall be the date of execution by the Indian
7 tribe and the Secretary or another date agreed on by
8 the parties.

9 “(3) DURATION.—A compact shall remain in
10 effect so long as permitted by Federal law or until
11 terminated by agreement of the parties.

12 “(4) AMENDMENT.—A compact may be amend-
13 ed only by agreement of the parties.

14 “(e) FUNDING AGREEMENTS.—

15 “(1) SCOPE.—A funding agreement under sub-
16 section (a) shall, at the option of the Indian tribe,
17 authorize the Indian tribe to plan, conduct, and ad-
18 minister included programs administered by the Sec-
19 retary through an agency of the Department of
20 Health and Human Services, set forth in paragraphs
21 (2) through (4).

22 “(2) INITIAL INCLUDED PROGRAMS.—The fol-
23 lowing programs are eligible for inclusion in a fund-
24 ing agreement under this title.

1 “(A) ADMINISTRATION ON AGING.—Grants
2 for Native Americans under title VI of the
3 Older Americans Act of 1965 (42 U.S.C. 3057
4 et seq.).

5 “(B) ADMINISTRATION FOR CHILDREN
6 AND FAMILIES.—

7 “(i) The tribal temporary assistance
8 for needy families program under section
9 412(a)(1) of the Social Security Act (42
10 U.S.C. 612(a)(1) et seq.).

11 “(ii) The Low-Income Home Energy
12 Assistance Program under the Low-Income
13 Home Energy Assistance Act of 1981 (42
14 U.S.C. 8621 et seq.).

15 “(iii) The Community Services Block
16 Grant Program under the Community
17 Services Block Grant Act (42 U.S.C. 9901
18 et seq.).

19 “(iv) The Child Care and Develop-
20 ment Fund under the Child Care and De-
21 velopment Block Grant Act (42 U.S.C.
22 9858 et seq.).

23 “(v) The native employment works
24 program under section 412(a)(2) of the
25 Social Security Act (42 U.S.C. 612(a)(2)).

1 “(vi) The Head Start Program under
2 the Head Start Act (42 U.S.C. 9831 et
3 seq.).

4 “(vii) Child welfare services programs
5 under part B of title IV of the Social Secu-
6 rity Act (42 U.S.C. 620 et seq.).

7 “(viii) The promoting safe and stable
8 families program under part B of title IV
9 of the Social Security Act (42 U.S.C. 620
10 et seq.).

11 “(ix) Family violence prevention
12 grants for battered women’s shelters under
13 the Family Violence Prevention and Serv-
14 ices Act (42 U.S.C. 10401 et seq.).

15 “(C) SUBSTANCE ABUSE AND MENTAL
16 HEALTH SERVICES ADMINISTRATION.—Tar-
17 geted capacity expansion program under title V
18 of the Public Health Service Act (42 U.S.C.
19 290aa et seq.).

20 “(D) BLOCK GRANTS REGARDING MENTAL
21 HEALTH AND SUBSTANCE ABUSE.—Mental
22 health and substance abuse block grant pro-
23 grams under title XIX of the Public Health
24 Services Act (42 U.S.C. 300x et seq.).

1 “(E) HEALTH RESOURCES AND SERVICES
2 ADMINISTRATION.—Community health center
3 grants under section 330 of the Public Health
4 Service Act (42 U.S.C. 254b).

5 “(3) ADDITIONAL INCLUDED PROGRAMS.—The
6 Secretary may identify not more than 6 additional
7 programs annually for inclusion in the demonstra-
8 tion project, including—

9 “(A) all other programs in which Indian
10 tribes are eligible to participate;

11 “(B) all other programs for which Indians
12 are eligible beneficiaries; and

13 “(C) competitive grants for which an In-
14 dian tribe receives an individual or cooperative
15 award, on the condition that the Indian tribe
16 agree in the funding agreement to restrictions
17 regarding program redesign and budget re-
18 allocation for any competitive awards.

19 “(4) CONTENTS.—A funding agreement—

20 “(A) shall specify—

21 “(i) the services to be provided;

22 “(ii) the functions to be performed;

23 and

24 “(iii) the responsibilities of the Indian
25 tribe and the Secretary;

1 “(B) shall provide for payment by the Sec-
2 retary to the Indian tribe of funds in accord-
3 ance with section 605;

4 “(C) shall not allow the Secretary to waive,
5 modify, or diminish in any way the trust re-
6 sponsibility of the United States with respect to
7 Indian tribes and individual Indians that exist
8 under treaties, Executive orders, and Acts of
9 Congress; and

10 “(D) shall allow for retrocession of in-
11 cluded programs under section 105(e).

12 **“SEC. 605. TRANSFER OF FUNDS.**

13 “(a) **TRANSFER.—**

14 “(1) **IN GENERAL.—**Under any compact or
15 funding agreement entered into under this title, the
16 Secretary shall transfer to the Indian tribe all funds
17 provided for in the funding agreement.

18 “(2) **TIMING.—**Unless the funding agreement
19 provides otherwise, at the request of the Indian
20 tribe—

21 “(A) funding shall be paid in 1 annual
22 lump sum payment; and

23 “(B) the transfer shall be made not later
24 than 10 days after the apportionment of funds

1 by the Office of Management and Budget to the
2 Department of Health and Human Services.

3 “(b) AMOUNT OF FUNDING.—

4 “(1) FUNDING FORMULAS.—

5 “(A) IN GENERAL.—Any statutory funding
6 formula for an included program—

7 “(i) shall be waived for the dem-
8 onstration project under this title; and

9 “(ii) shall be used to determine the
10 amount of funding provided to an Indian
11 tribe.

12 “(B) ADEQUACY.—Subject to the avail-
13 ability of appropriations—

14 “(i) the funding amount shall be ade-
15 quate to permit the successful implementa-
16 tion of the demonstration project; and

17 “(ii) the Secretary and the partici-
18 pating Indian tribe shall determine the
19 funding amount through negotiation.

20 “(2) MATCHING REQUIREMENT.—An Indian
21 tribe may request a waiver of any matching require-
22 ment applicable to an included program; and the
23 Secretary shall liberally grant such reasonable waiv-
24 er requests.

1 ~~“(3) CONTRACT SUPPORT COSTS.—~~There shall
 2 be added to the amount required by paragraph (1)
 3 contract support costs as specified in paragraphs
 4 ~~(2), (3), (5), and (6)~~ of section 106(a).

5 ~~“(4) ADMINISTRATIVE FUND SHARES.—~~

6 ~~“(A) IN GENERAL.—~~An Indian tribe may
 7 negotiate for a tribal share of administrative
 8 funds without regard to the organizational level
 9 at which the included programs are carried out.

10 ~~“(B) INCLUSION.—~~A tribal share under
 11 subparagraph (A) shall include a share for
 12 training and technical assistance services per-
 13 formed by a contractor.

14 **“SEC. 606. GENERAL PROVISIONS.**

15 ~~“(a) REDESIGN, CONSOLIDATION, AND REALLOCA-~~
 16 ~~TION.—~~

17 ~~“(1) IN GENERAL.—~~To the extent allowed
 18 under the statutory provisions of the included pro-
 19 grams included in the funding agreement, and sub-
 20 ject to the terms of the funding agreement, an In-
 21 dian tribe may—

22 ~~“(A) redesign or consolidate the included~~
 23 ~~programs under the funding agreement if the~~
 24 ~~Indian tribe agrees to abide by the statutory~~
 25 ~~purposes of the program; and~~

1 “(B) reallocate or redirect funds for the in-
2 eluded programs, among the included programs
3 under the funding agreement, so long as all
4 demonstration project costs using those funds
5 meet allowable cost standards as required by
6 section 506(e).

7 “(2) WAIVERS.—

8 “(A) IN GENERAL.—At the request of an
9 Indian tribe, if the Secretary determines that a
10 waiver would further the purposes of this Act,
11 the Secretary shall grant a waiver of program
12 requirements for the duration of the demonstra-
13 tion project to facilitate the ability of an Indian
14 tribe to redesign included programs or reallo-
15 cate funds under paragraph (1).

16 “(B) DOCUMENTATION.—The Secretary
17 shall document all requests for a waiver under
18 subparagraph (A), including a description of—

19 “(i) the reasons for each request;

20 “(ii) the effect of the waiver on the
21 Indian tribe making the request; and

22 “(iii) the views of the Indian tribe re-
23 garding the requested waiver.

24 “(b) INABILITY TO AGREE ON COMPACT OR FUND-
25 ING AGREEMENT.—

1 “(1) FINAL OFFER.—If the Secretary and an
2 Indian tribe are unable to agree, in whole or in part,
3 on the terms of a compact or funding agreement (in-
4 cluding funding levels), the Indian tribe may submit
5 a final offer to the Secretary.

6 “(2) DETERMINATION.—Not later than 45 days
7 after the date of submission of a final offer, or as
8 otherwise agreed to by the Indian tribe, the Sec-
9 retary shall review and make a determination with
10 respect to the final offer.

11 “(3) NO TIMELY DETERMINATION.—If the Sec-
12 retary fails to make a determination with respect to
13 a final offer within the time specified in paragraph
14 (2), the Secretary shall be deemed to have agreed to
15 the final offer.

16 “(4) REJECTION OF FINAL OFFER.—

17 “(A) IN GENERAL.—If the Secretary re-
18 jects a final offer, the Secretary shall—

19 “(i) submit to the Indian tribe a writ-
20 ten statement clearly setting forth the rea-
21 sons for rejecting the final offer; and

22 “(ii) provide the Indian tribe with a
23 hearing on the record (except that the In-
24 dian tribe may, in lieu of such a hearing,
25 file an appeal of the rejection to the Intra-

1 Departmental Council on Native American
2 Affairs, the decision of which shall be final
3 and not subject to judicial review).

4 “(B) BURDEN OF PROOF.—In a hearing or
5 appeal under subparagraph (A)(ii), the Sec-
6 retary shall have the burden of proving by clear
7 and convincing evidence the validity of the
8 grounds for rejecting the final offer.

9 “(c) OTHER FUNDING.—Participation by an Indian
10 tribe in the demonstration project under this title shall
11 not affect the amount of funding that the Indian tribe
12 would receive under the laws (including regulations) gov-
13 erning the included programs if the Indian tribe did not
14 participate.

15 “(d) DUPLICATION OF ELIGIBILITY.—To the max-
16 imum extent practicable, an Indian tribe shall make ef-
17 forts to coordinate with appropriate States to identify du-
18 ally eligible individuals to address the potential for the
19 provision of duplicate benefits.

20 “(e) APPEALS.—Except as provided in subsection
21 (b)(2), a compact or funding agreement under this title
22 shall be considered to be a contract for the purposes of
23 section 110.

24 “(f) REGULATIONS; OTHER AGENCY STATEMENTS.—

1 “(1) REGULATIONS.—An Indian tribe shall
2 comply with final regulations for the included pro-
3 grams in connection with the demonstration project.

4 “(2) OTHER AGENCY STATEMENTS.—Unless ex-
5 pressly agreed to by an Indian tribe in a compact or
6 funding agreement, the Indian tribe shall not be
7 subject to any agency circular, policy, manual, guid-
8 ance, or rule that is promulgated by regulation.

9 “(g) APPLICABILITY OF OTHER PROVISIONS.—The
10 following provisions of this Act shall apply to a compact
11 or funding agreements entered into under this title:

12 “(1) Section 102(d).

13 “(2) Section 506(b) (conflicts of interest).

14 “(3) Section 506(e)(1) (Single Agency Audit
15 Act).

16 “(4) Section 506(e)(2) (cost principles).

17 “(5) Section 506(e) (records).

18 “(6) Section 507(e)(1)(A) (grounds for reject-
19 ing a final offers).

20 “(7) Section 508(g) (prompt payment).

21 “(8) Section 506(h) (nonduplication).

22 “(9) Section 508(h) (interest or other income
23 on transfers).

24 “(10) Section 508(i) (carryover of funds).

25 “(11) Section 509 (construction projects).

1 ~~“(12) Section 510 (Federal procurement laws).~~

2 ~~“(13) Section 512(b) (regulation waivers).~~

3 **~~“SEC. 607. REPORT.~~**

4 ~~“(a) IN GENERAL.—The Secretary shall annually~~
5 ~~submit to Congress a report on the relative costs and bene-~~
6 ~~fits of the demonstration project using evaluation and re-~~
7 ~~porting data provided by participating Indian tribes.~~

8 ~~“(b) BASELINE MEASUREMENTS.—~~

9 ~~“(1) IN GENERAL.—A report under subsection~~
10 ~~(a) shall be based on baseline measurements devel-~~
11 ~~oped jointly by the Secretary and participating In-~~
12 ~~dian tribes.~~

13 ~~“(2) FINANCIAL ASSISTANCE.—The Secretary~~
14 ~~shall provide financial assistance to Indian tribes to~~
15 ~~assist Indian tribes in evaluating and reporting on~~
16 ~~the demonstration project.~~

17 ~~“(c) CONTENTS.—A report under subsection (a)~~
18 ~~shall—~~

19 ~~“(1) verify that the participating Indian tribes~~
20 ~~met the statutory purposes of the included pro-~~
21 ~~grams;~~

22 ~~“(2) confirm that key self-governance principles~~
23 ~~were carried out as Indian tribes operated the in-~~
24 ~~cluded programs; and~~

1 ~~“(3) separately include Federal and tribal view-~~
 2 ~~points regarding—~~

3 ~~“(A) the merger of included programs op-~~
 4 ~~erated under this title and self-governance prin-~~
 5 ~~iples; and~~

6 ~~“(B) the impact on program beneficiaries.~~

7 **“SEC. 608. AUTHORIZATION OF APPROPRIATIONS.**

8 ~~“There are authorized to be appropriated such sums~~
 9 ~~as are necessary to carry out this title, to remain available~~
 10 ~~until expended.”.~~

11 **SECTION 1. SHORT TITLE.**

12 *This Act may be cited as the “Department of Health*
 13 *and Human Services Tribal Self-Governance Amendments*
 14 *Act of 2004”.*

15 **SEC. 2. AMENDMENT.**

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10 agreement’ means a funding agreement under section
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13 program’ means a program that is eligible for inclu-
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16 function, service, or activity performed under such a
17 program).

18 “(6) *INDIAN TRIBE*.—The term ‘Indian tribe’, in
19 a case in which an Indian tribe authorizes another
20 Indian tribe, an inter-tribal consortium, or a tribal
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22 program on its behalf in accordance with section
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15 *project to demonstrate the effectiveness of tribal operation*
16 *of the included programs under self-governance principles*
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19 *istration of the demonstration project shall be in the Office*
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4 *50 eligible Indian tribes request participation, the*
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9 *an Indian tribe authorizes another Indian tribe, an*
10 *inter-tribal consortium, or a tribal organization to*
11 *plan for or carry out an included program on its be-*
12 *half under this title, the authorized Indian tribe,*
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14 *have the rights and responsibilities of the authorizing*
15 *Indian tribe (except as otherwise provided in the au-*
16 *thorizing resolution).*

17 “(b) *ELIGIBILITY.—An Indian tribe shall be eligible*
18 *to participate in the demonstration project if the Indian*
19 *tribe, as of the date of enactment of the Department of*
20 *Health and Human Services Tribal Self-Governance*
21 *Amendments Act of 2004, is a party to a compact or fund-*
22 *ing agreement under this Act.*

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12 for Native Americans under title VI of the Older
13 Americans Act of 1965 (42 U.S.C. 3057 et seq.).

14 “(B) *ADMINISTRATION FOR CHILDREN AND*
15 *FAMILIES.*—

16 “(i) *The tribal temporary assistance*
17 *for needy families program under section*
18 *412(a)(1) of the Social Security Act (42*
19 *U.S.C. 612(a)(1) et seq.).*

20 “(ii) *The Low-Income Home Energy*
21 *Assistance Program under the Low-Income*
22 *Home Energy Assistance Act of 1981 (42*
23 *U.S.C. 8621 et seq.).*

24 “(iii) *The Community Services Block*
25 *Grant Program under the Community Serv-*

1 *ices Block Grant Act (42 U.S.C. 9901 et*
2 *seq.).*

3 “(iv) *The Child Care and Development*
4 *Fund under the Child Care and Develop-*
5 *ment Block Grant Act (42 U.S.C. 9858 et*
6 *seq.).*

7 “(v) *The native employment works*
8 *program under section 412(a)(2) of the So-*
9 *cial Security Act (42 U.S.C. 612(a)(2)).*

10 “(vi) *The Head Start Program under*
11 *the Head Start Act (42 U.S.C. 9831 et seq.).*

12 “(vii) *Child welfare services programs*
13 *under part B of title IV of the Social Secu-*
14 *rity Act (42 U.S.C. 620 et seq.).*

15 “(viii) *The promoting safe and stable*
16 *families program under part B of title IV*
17 *of the Social Security Act (42 U.S.C. 620 et*
18 *seq.).*

19 “(ix) *Family violence prevention*
20 *grants for battered women’s shelters under*
21 *the Family Violence Prevention and Serv-*
22 *ices Act (42 U.S.C. 10401 et seq.).*

23 “(C) *SUBSTANCE ABUSE AND MENTAL*
24 *HEALTH SERVICES ADMINISTRATION.—Targeted*
25 *capacity expansion program under title V of the*

1 *Public Health Service Act (42 U.S.C. 290aa et*
2 *seq.).*

3 “(D) *BLOCK GRANTS REGARDING MENTAL*
4 *HEALTH AND SUBSTANCE ABUSE.—Mental health*
5 *and substance abuse block grant programs under*
6 *title XIX of the Public Health Services Act (42*
7 *U.S.C. 300x et seq.).*

8 “(E) *HEALTH RESOURCES AND SERVICES*
9 *ADMINISTRATION.—Community health center*
10 *grants under section 330 of the Public Health*
11 *Service Act (42 U.S.C. 254b).*

12 “(3) *ADDITIONAL INCLUDED PROGRAMS.—The*
13 *Secretary may identify not more than 6 additional*
14 *programs annually for inclusion in the demonstration*
15 *project, including—*

16 “(A) *all other programs in which Indian*
17 *tribes are eligible to participate;*

18 “(B) *all other programs for which Indians*
19 *are eligible beneficiaries; and*

20 “(C) *competitive grants for which an In-*
21 *Indian tribe receives an individual or cooperative*
22 *award, on the condition that the Indian tribe*
23 *agree in the funding agreement to restrictions re-*
24 *garding program redesign and budget realloca-*
25 *tion for any competitive awards.*

1 “(4) *CONTENTS.—A funding agreement—*

2 “(A) *shall specify—*

3 “(i) *the services to be provided;*

4 “(ii) *the functions to be performed; and*

5 “(iii) *the responsibilities of the Indian*
6 *tribe and the Secretary;*

7 “(B) *shall provide for payment by the Sec-*
8 *retary to the Indian tribe of funds in accordance*
9 *with section 605;*

10 “(C) *shall not allow the Secretary to waive,*
11 *modify, or diminish in any way the trust re-*
12 *sponsibility of the United States with respect to*
13 *Indian tribes and individual Indians that exist*
14 *under treaties, Executive orders, and Acts of*
15 *Congress; and*

16 “(D) *shall allow for retrocession of included*
17 *programs under section 105(e).*

18 **“SEC. 605. TRANSFER OF FUNDS.**

19 “(a) *TRANSFER.—*

20 “(1) *IN GENERAL.—Under any compact or fund-*
21 *ing agreement entered into under this title, the Sec-*
22 *retary shall transfer to the Indian tribe all funds pro-*
23 *vided for in the funding agreement.*

1 “(2) *TIMING.*—Unless the funding agreement
2 provides otherwise, at the request of the Indian
3 tribe—

4 “(A) *funding shall be paid in 1 annual*
5 *lump sum payment; and*

6 “(B) *the transfer shall be made not later*
7 *than 10 days after the apportionment of funds*
8 *by the Office of Management and Budget to the*
9 *Department of Health and Human Services.*

10 “(b) *AMOUNT OF FUNDING.*—

11 “(1) *FUNDING FORMULAS.*—

12 “(A) *IN GENERAL.*—Any statutory funding
13 formula for an included program shall be used to
14 identify the funds to be paid to an Indian tribe.

15 “(B) *ADEQUACY.*—Subject to the avail-
16 ability of appropriations, an additional funding
17 amount may be provided by the Secretary to
18 permit the successful implementation of the dem-
19 onstration project.

20 “(C) *NEGOTIATION.*—The Secretary and the
21 participating Indian tribe shall determine the
22 overall funding amount through negotiation.

23 “(2) *MATCHING REQUIREMENT.*—An Indian
24 tribe may request a waiver of any matching require-
25 ment applicable to an included program, and the Sec-

1 *retary shall liberally grant such reasonable waiver re-*
 2 *quests.*

3 *“(3) CONTRACT SUPPORT COSTS.—There shall be*
 4 *added to the amount required by paragraph (1) con-*
 5 *tract support costs as specified in paragraphs (2), (3),*
 6 *(5), and (6) of section 106(a).*

7 *“(4) ADMINISTRATIVE FUND SHARES.—*

8 *“(A) IN GENERAL.—An Indian tribe may*
 9 *negotiate for a tribal share of administrative*
 10 *funds without regard to the organizational level*
 11 *at which the included programs are carried out.*

12 *“(B) INCLUSION.—A tribal share under sub-*
 13 *paragraph (A) shall include a share for training*
 14 *and technical assistance services performed by a*
 15 *contractor.*

16 **“SEC. 606. GENERAL PROVISIONS.**

17 *“(a) REDESIGN, CONSOLIDATION, AND REALLOCA-*
 18 *TION.—*

19 *“(1) IN GENERAL.—To the extent allowed under*
 20 *the statutory provisions of the included programs in-*
 21 *cluded in the funding agreement, and subject to the*
 22 *terms of the funding agreement, an Indian tribe*
 23 *may—*

24 *“(A) redesign or consolidate the included*
 25 *programs under the funding agreement if the In-*

1 *dian tribe agrees to abide by the statutory pur-*
2 *poses of the program; and*

3 *“(B) reallocate or redirect funds for the in-*
4 *cluded programs, among the included programs*
5 *under the funding agreement, so long as all dem-*
6 *onstration project costs using those funds meet*
7 *allowable cost standards as required by section*
8 *506(c).*

9 *“(2) WAIVERS.—*

10 *“(A) IN GENERAL.—At the request of an In-*
11 *dian tribe and consistent with section 512(b), the*
12 *Secretary shall grant a waiver of final regula-*
13 *tions for the duration of the demonstration*
14 *project to facilitate the ability of an Indian tribe*
15 *to redesign included programs or reallocate funds*
16 *under paragraph (1).*

17 *“(B) DOCUMENTATION.—The Secretary*
18 *shall document all requests for a waiver under*
19 *subparagraph (A), including a description of—*

20 *“(i) the reasons for each request;*

21 *“(ii) the effect of the waiver on the In-*
22 *dian tribe making the request; and*

23 *“(iii) the views of the Indian tribe re-*
24 *garding the requested waiver.*

1 “(b) *INABILITY TO AGREE ON COMPACT OR FUNDING*
2 *AGREEMENT.*—

3 “(1) *FINAL OFFER.*—*If the Secretary and an In-*
4 *Indian tribe are unable to agree, in whole or in part,*
5 *on the terms of a compact or funding agreement (in-*
6 *cluding funding levels), the Indian tribe may submit*
7 *a final offer to the Secretary.*

8 “(2) *DETERMINATION.*—*Not later than 45 days*
9 *after the date of submission of a final offer, or as oth-*
10 *erwise agreed to by the Indian tribe, the Secretary*
11 *shall review and make a determination with respect*
12 *to the final offer.*

13 “(3) *NO TIMELY DETERMINATION.*—*If the Sec-*
14 *retary fails to make a determination with respect to*
15 *a final offer within the time specified in paragraph*
16 *(2), the Secretary shall be deemed to have agreed to*
17 *the final offer.*

18 “(4) *REJECTION OF FINAL OFFER.*—

19 “(A) *IN GENERAL.*—*If the Secretary rejects*
20 *a final offer, the Secretary shall—*

21 “(i) *submit to the Indian tribe a writ-*
22 *ten statement clearly setting forth the rea-*
23 *sons for rejecting the final offer; and*

24 “(ii) *provide the Indian tribe with a*
25 *hearing on the record (except that the In-*

1 *dian tribe may, in lieu of such a hearing,*
2 *file an appeal of the rejection to the Intra-*
3 *Departmental Council on Native American*
4 *Affairs, the decision of which shall be final*
5 *and not subject to judicial review).*

6 “(B) *BURDEN OF PROOF.*—*In a hearing or*
7 *appeal under subparagraph (A)(ii), the Sec-*
8 *retary shall have the burden of proving by clear*
9 *and convincing evidence the validity of the*
10 *grounds for rejecting the final offer.*

11 “(c) *OTHER FUNDING.*—*Participation by an Indian*
12 *tribe in the demonstration project under this title shall not*
13 *affect the amount of funding that the Indian tribe would*
14 *receive under the laws (including regulations) governing the*
15 *included programs if the Indian tribe did not participate.*

16 “(d) *DUPLICATION OF ELIGIBILITY.*—*To the max-*
17 *imum extent practicable, an Indian tribe shall make efforts*
18 *to coordinate with appropriate States to identify dually eli-*
19 *gible individuals to address the potential for the provision*
20 *of duplicate benefits.*

21 “(e) *APPEALS.*—*Except as provided in subsection (b),*
22 *a compact or funding agreement under this title shall be*
23 *considered to be a contract for the purposes of section 110.*

24 “(f) *REGULATIONS; OTHER AGENCY STATEMENTS.*—

1 “(1) *REGULATIONS.*—*Unless otherwise waived*
2 *pursuant to section 606, an Indian tribe shall comply*
3 *with final regulations for the included programs in*
4 *connection with the demonstration project.*

5 “(2) *OTHER AGENCY STATEMENTS.*—*Unless ex-*
6 *pressly agreed to by an Indian tribe in a compact or*
7 *funding agreement, the Indian tribe shall not be sub-*
8 *ject to any agency circular, policy, manual, guidance,*
9 *or rules, except as provided under paragraph (1).*

10 “(g) *APPLICABILITY OF OTHER PROVISIONS.*—*The fol-*
11 *lowing provisions of this Act shall apply to a compact or*
12 *funding agreements entered into under this title:*

13 “(1) *Section 102(d).*

14 “(2) *Section 506(b) (conflicts of interest).*

15 “(3) *Section 506(c)(1) (Single Agency Audit*
16 *Act).*

17 “(4) *Section 506(c)(2) (cost principles).*

18 “(5) *Section 506(c) (records).*

19 “(6) *Section 507(c)(1)(A) (grounds for rejecting*
20 *a final offer).*

21 “(7) *Section 508(g) (prompt payment).*

22 “(8) *Section 506(h) (nonduplication).*

23 “(9) *Section 508(h) (interest or other income on*
24 *transfers).*

25 “(10) *Section 508(i) (carryover of funds).*

1 “(11) Section 509 (construction projects).

2 “(12) Section 510 (Federal procurement laws).

3 “(13) Section 512(b) (regulation waivers).

4 **“SEC. 607. REPORT.**

5 “(a) *IN GENERAL.*—*The Secretary shall annually sub-*
6 *mit to Congress a report on the relative costs and benefits*
7 *of the demonstration project using evaluation and reporting*
8 *data provided by participating Indian tribes.*

9 “(b) *BASELINE MEASUREMENTS.*—

10 “(1) *IN GENERAL.*—*A report under subsection*
11 *(a) shall be based on baseline measurements developed*
12 *jointly by the Secretary and participating Indian*
13 *tribes.*

14 “(2) *FINANCIAL ASSISTANCE.*—*The Secretary*
15 *shall provide financial assistance to Indian tribes to*
16 *assist Indian tribes in evaluating and reporting on*
17 *the demonstration project.*

18 “(c) *CONTENTS.*—*A report under subsection (a)*
19 *shall—*

20 “(1) *verify that the participating Indian tribes*
21 *met the statutory purposes of the included programs;*

22 “(2) *confirm that key self-governance principles*
23 *were carried out as Indian tribes operated the in-*
24 *cluded programs; and*

1 “(3) separately include Federal and tribal view-
2 points regarding—

3 “(A) the merger of included programs oper-
4 ated under this title and self-governance prin-
5 ciples; and

6 “(B) the impact on program beneficiaries.

7 **“SEC. 608. AUTHORIZATION OF APPROPRIATIONS.**

8 *“There are authorized to be appropriated such sums*
9 *as are necessary to carry out this title, to remain available*
10 *until expended.”.*

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108TH CONGRESS
2^D SESSION

S. 1696

[Report No. 108-412]

A BILL

To amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes.

NOVEMBER 16, 2004

Reported with an amendment